COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 3, 1998

PETITION OF

THE VIRGINIA BANKERS ASSOCIATION CASE NO. BFI970070

For review of actions of the
Bureau of Financial Institutions
in applying the common bond
provisions of the Virginia Credit
Union Act

ORDER

The Petition of the Virginia Bankers Association ("the VBA"), filed August 8, 1997, sought Commission review of certain practices of the Bureau of Financial Institutions under Rule 3:4 of the Commission's Rules of Practice and Procedure. The VBA challenged the Bureau's having allowed a number of state-chartered credit unions to expand their fields of membership by the addition of "small employee groups" and by describing geographic (or community) common bonds.

A formal proceeding was established by order dated September 11, 1997, and the Bureau gave notice to all state-chartered credit unions and banks, and others. Interested parties were offered an opportunity to file written responses; thereafter any participant that believed a hearing was needed on issues raised by the filings was allowed to file a statement to

that effect, giving reasons. The Virginia Credit Union League ("the League"), and three community-based credit unions ("the Community CUs") filed responses October 15, 1997. The "Response and Motion to Dismiss of the Virginia Credit Union League" sought to have the Petition dismissed on grounds that the VBA was not a "person in interest" within the meaning of Rule 3:4. Staff counsel filed a "Response of the Bureau of Financial Institutions" dated October 28, 1997.[1]

On November 5, 1997, the VBA, the League and the Community CUs filed additional pleadings. The VBA's "Reply and Statement Concerning Need for Hearing" took the position that a hearing was not necessary. The League's "Statement With Respect To Further Proceedings" asked that a decision be delayed until the Supreme Court of the United States decided a pending case, and also sought a hearing in order to present evidence on the structure of the credit union industry, its clientele and unique function, ostensibly in response to characterizations of the industry contained in certain VBA policy arguments. The Community CUs' "Request for Hearing" asked for an opportunity to present evidence on the nature of the common bond, the nature of the services that community credit unions provide to their communities, and the circumstances surrounding the Bureau's having granted the bylaw amendments resulting in the Community CU's current fields of membership.

[1] The League moved to substitute counsel October 30, 1997. There being no objection, the League's motion is granted.

Petitioner asserts that the provisions of the Virginia Credit Union Act (Chapter 4.01 of Title 6.1 of the Code of Virginia) governing the common bonds of Virginia state credit unions, primarily § 6.1-225.23 of the Code, plainly do not permit a Virginia credit union to have more than one membership group, and do not allow membership to be based on residence or employment in a particular geographic area or political subdivision or community.[2] The VBA requests the issuance of an order to the above effect, but stops short of suggesting that any existing field of membership be disturbed.

The League contends that the Bureau acted within its administrative discretion both in permitting "small employee groups" (SEGs) to be added to the fields of membership of existing credit unions and in granting community charters. The Community CUs argue that the plain language of § 6.1-225.23 allows community charters.

The "Response of the Bureau of Financial Institutions" contains an explanation of the history and reasons underlying the Bureau's SEG practices. The Bureau states that it has not understood the common-bond provision of the Virginia Act as being designed to limit competition with banks. It relates that the policy of adding SEGs to existing credit unions was begun in 1974, based on a practical concern for the viability of credit

[2] Section 6.1 of the Code of Virginia provides (in part): "B. Credit union membership shall be limited to persons having a specified common bond of interest, members of their immediate families, associations of such persons, other credit unions and employees of the credit union".

unions having less than adequate membership -- coupled with a desire to make credit union services reasonably available to employees of small firms. The practice of adding SEGs continued in Virginia following certain 1982 National Credit Union Administration rulings that formalized the practice of adding SEGs to federal credit unions. The Bureau's Exhibit A listed 18 state credit unions having fields of membership that include SEGs.

In response to a request contained in House Joint Resolution No. 309 of the 1989 Session of the General Assembly, the Virginia Code Commission studied Chapter 4 of Title 6.1 of the Code with a view toward revising the chapter "to make the laws governing [Virginia] credit unions clearer, better organized, and more uniform".[3] Though it considered incorporating in Chapter 4.01 provisions that would have allowed state-chartered credit unions "to include in their membership groups with common bonds" . . . "as allowed by federal law", the Code Commission decided that such a substantive change to existing law would exceed the bounds of H.J.R. No. 309.[4] The Bureau reports that it did not view this inaction of the Code Commission as affecting the long-standing Bureau SEG policy and practice. That position is not unreasonable, given (1) the changes in the Act since 1980 to enable and facilitate mergers of credit unions, and (2) the

[3] H.J.R. 309, 1989 Regular Session, Vol. II, p. 2088.
[4] "Report of the Virginia Code Commission on the Revision of Chapter 4 of Tile 6.1 of the Code of Virginia to the Governor and the General Assembly of Virginia", House Document No. 50 (1990), Introduction and Summary.

General Assembly's impetus toward maintaining parity between state and federal credit unions through a grant of "wild card" authority, i.e., the ability to adopt regulations giving state credit unions powers at least comparable to those of their federal counterparts. (See §§ 6.1-225.3:1, 6.1-225.22 and 6.1-225.27 of the Code of the Virginia.)

Adopting a cautious approach, the Bureau stopped adding SEGs not long after the July 30, 1996, decision of the U.S. Circuit Court of Appeals for the D.C. Circuit in First National Bank & Trust v. National Credit Union Administration and AT&T Family Federal, 90 F3d 525 (D.C. Cir. 1996) (hereinafter "AT&T Family Federal").[5] The United States Supreme Court heard argument on an appeal from the AT&T Family Federal case in October of 1997. The Court decided February 25, 1998 that banks and the American Bankers Association had standing to sue in federal court.[6] The Court held also that the National Credit Union Administration had erred in construing § 109 of the National Credit Union Act so as to allow federal credit unions to have more than one common bond.

Because the issues before the Supreme Court concerned judicial standing under federal statute and case law and the construction of the 1934 Federal Credit Union Act's common-bond provision, which differs substantially from § 6.1-225.23 of the

[5] It was in early 1997 that the three new community charters were authorized, according to the Bureau's "Response".

[6] National Credit Union Administration, Petitioner v. First National Bank & Trust Co. et al. and AT&T Family Federal Credit Union, et al., Petitioners v. First National Bank and Trust Co. et al., Nos. 96-843 and 96-847.

Code, the conclusions of the Supreme Court in the AT&T Family Federal case are not dispositive - though instructive - in addressing the issues raised by this Petition.[7]

As to the question whether this Petition may properly be brought before the Commission by the VBA, we have weighed carefully all the authorities cited by the parties. We are mindful in particular of the recent affirmance by the Supreme Court of Virginia of our decision to dismiss a petition filed purportedly under Rule 3:4. See Ernst & Young LLP v. State Corporation Commission, Record No. 971810 (January 20, 1998). We are of the opinion that that case is distinguishable on its facts from the present situation. This matter involves the Bureau's construction - and its application on a number of occasions - of a Virginia statute affecting state-chartered credit unions and banks (especially "community banks"), both of which are subject to regulation by the Bureau. We find, in these circumstances, that the VBA may properly bring the Petition.

Under Rule 3:4 of our Rules of Practice and Procedure we review, in our capacity as administrative heads of the Commission, disputed interpretations
and applications of law by the various divisions of the Commission.[8]

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[7] 12 U.S.C. § 1759 provides (in relevant part):
. . . Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district.

[8] Rule 3:4 provides:
Upon written petition of any person in interest dissatisfied with any action taken by a division of the Commission, or by its failure to act,

In this matter the material facts are set forth in the pleadings of the parties and the "Response" filed by the Bureau. No party takes issue with any factual matter pleaded, and it is clear from the pleadings that no material fact is in dispute. The issues presented are questions of law, and the requests for a hearing lack supporting reasons.[9] In these circumstances, we decline to grant a hearing in the matter, and, having considered the League's March 5, 1998 "Motion for Additional Proceedings", and the VBA's "Motion for Permission to File a Response" tendered March 18, 1998, hereby deny those motions.

Having considered the Virginia Credit Union Act, particularly § 6.1-225.23 of the Code, all the pleadings filed and arguments made in this matter, and the precedents and authorities cited, IT IS ORDERED THAT the League's October 15, 1997 motion to dismiss the Petition herein is denied. With reference to the SEG practice complained of, we find that the Bureau correctly suspended the SEG practice in October, 1996, and that action is confirmed. We need do nothing further on this issue at this time.

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resulting from disputed facts or from disputed statutory interpretation or application, the Commission will set the matter for hearing. If the dispute be one of law only, in lieu of a hearing, the Commission may order a stipulation of facts and submission of the issues and argument by written briefs. Oral argument in any such case shall be with the consent of the Commission.

[9] The September 11, 1997 "Order Establishing a Proceeding and Directing Filings" herein required a statement with reasons as to the need for a hearing.

The Bureau has concluded that the language of Virginia's common-bond statute, which omits the limiting phrases found in the 1934 federal Act, means that geographic, political subdivision or community common bonds are not precluded by state law. We have considered Petitioner's arguments to the contrary, and we agree with the Bureau, provided those within the postulated community share a "uniting force or tie; link", i.e., a bond.[10] We will rely on the Bureau to require that such common bonds be reasonably established by a factual showing. The existing fields of membership of Virginia credit unions may be retained; new members may be added within those current fields.

Having completed our review of the Bureau practices questioned in this proceeding, we hereby dismiss this matter and order it removed from the docket.

[10] American Heritage Dictionary, Second College Edition (1985).